favour would seem to indicate that she had complete trust in him. If the other members of the company are not happy with the articles of association of the company, the only solution would appear to be for them to take steps to have them altered or amended. As I have already stated, articles 62 and 63 of the company can be altered or amended by a special resolution.

One of the prayers in the petition is that an independent person be appointed as a manager of the company. I have given this matter very careful thought and have come to the conclusion that it may not be in the interests of everybody concerned to have a complete stranger introduced into the management of the company. After all, what is required to be done for the present is to find a method whereby the affairs of the company can be managed as before pending the result of the probate action. It is common ground that the petitioner agreed at the general meeting on 3rd December, 1966 not to exercise the powers of managing director and to leave them in the hands of the directors under article 82 of the articles of association. That would appear to me to be the only protem solution of the problem, the object being to maintain as far as possible the *status quo* as on the date of death of Chi Liung. In the circumstances I will make the orders as prayed for in the petition, appointing the petitioner at the same time as manager of the company at his former remuneration of $800 a month. I must repeat that, pending the result of the probate action, that *status quo* must be maintained and the directors must refrain from embarking on any major matters of policy or sale of the assets of the company.

The orders which I make under sub-sections (2) and (4) of section 181 of the Companies Act, 1965 are as follows:—

(a) that the resolution passed at the extraordinary general meeting on the 24th day of March, 1967 appointing the respondents, Tong Lee Hwa and Tong Young Fah, as managing director and assistant managing director respectively be and is hereby cancelled;

(b) that an injunction be and is hereby issued restraining the said Tong Lee Hwa and Tong Young Fah from acting as such managing director and assistant managing director respectively;

(c) that, pending the decision of the suit in this court between the petitioner and the first respondent with regard to the transfer in respect of the 325 shares, the registration of the transfer of the 325 shares purported to have been made by the petitioner to the first respondent be deleted from the register of shareholders;

(d) that, pending the decision of this court with regard to probate proceedings in respect of the wills made by the deceased Chi Liung, the company be managed in the manner it was managed on the day immediately prior to the death of the deceased and that for this purpose the petitioner be and is hereby appointed as manager at a salary of $800 a month;

(e) that the duties of the manager hereby appointed be restricted to collecting the income of the company and paying all salaries of the employees of the company and meeting all expenses in the day to day management of the company; and

(f) that the directors do refrain from embarking on any major policy with regard to the management of the company and that they do refrain from selling any of the assets of the company.

There will be liberty to the parties to apply.

In all the circumstances of the case the petitioner and the first two respondents will have their taxed costs out of the assets of the company.

Order accordingly.

Solicitors: *Rithauddeen & Aziz; Allen & Gledhill.*

RE RENGASAMY PILLAI; *EX PARTE* THE COMPTROLLER OF INCOME TAX, KUALA LUMPUR

[O.Bk.J. (Chang Min Tat J.) November 11, 1967]

[Penang — In Bankruptcy No. 76 of 1967]

Bankruptcy — Notice — Excessive demand and its consequence upon validity of notice — Bankruptcy Act, 1967, s. 3(2) — Form of bankruptcy notice in Bankruptcy Rules, 1897 — Requirements of.

Courts of Judicature Act, 1964, s. 7(1) — Interpretation Act, 1967, s. 28.

The Comptroller of Income Tax having obtained a judgment against a debtor took out a bankruptcy notice in the prescribed form demanding payment of $54,286.68 upon penalty of an act of bankruptcy. The particulars of the sum due arising out of the debtor's tax position were set out in the notice.

Within 7 days of receipt of notice the debtor disputed the validity of the notice and sought to set aside the notice alleging: (1) the judgment had been varied by consent and could not stand, and (2) the notice demanded payment of a sum in excess of what was actually due.

The first ground alleged was not pursued at the hearing and it was without merit.

The second ground disputing the validity of the notice was that laid down in the proviso to section 3(2) of the Bankruptcy Ordinance, 1959, now repealed and re-enacted in section 3(2) Bankruptcy Act, 1967, whereby an excessive demand would render the bankruptcy notice invalid.

Some technical objections were taken by the debtor

as to the form of the bankruptcy notice alleging: (1) it offends against section 7(1) of the Courts of Judicature Act, 1964, and (2) endorsement thereto had not been signed by the comptroller (creditor) or on his behalf, and (3) the request for the notice was not signed personally by the comptroller but by his assistant.

Held: (1) after the assessment officer of the Inland Revenue Department had clearly explained the whole tax position and what was due by the debtor, it was apparent that there was no excess demand in the sum of $54,286.68 which would render the notice invalid;

(2) the form provided in the Bankruptcy Rules, 1897, contains no requirements for the signature of the creditor or any person on his behalf;

(3) the definition of "Comptroller" in section 2 of the Income Tax Ordinance, 1947, includes a deputy or an assistant comptroller;

(4) after examining the objections raised by the debtor in the light of relevant provisions of section 7(1) and (2) of the Courts of Judicature Act, 1964 and Bankruptcy Rules the objections seem to be unfounded in fact and law and accordingly the application should be dismissed.

BANKRUPTCY.

Jag-Jit Singh for the debtor.

Au Ah Wah (Senior Federal Court) for the creditor.

Chang Min Tat J.: Arising from the judgment obtained on 3rd July, 1964, by the Comptroller of Income Tax (hereinafter referred to as the creditor) against N. Rengasamy Pillai (hereinafter referred to as the debtor) in Penang High Court Civil Suit No. 113 of 1963, the creditor took out a bankruptcy notice in the form provided in the Bankruptcy Rules, 1897. The bankruptcy notice was issued on the 17th August, 1967, and signed by the senior assistant registrar, High Court, Penang, and sealed with the seal of the High Court, Penang. It was a notice demanding the payment of a sum of $54,826.68 upon penalty of an act of bankruptcy. Particulars of the sum due which were, properly, set out in the bankruptcy notice are as follows:—

"Principal			$309,660.53
Less: Tax discharged by			
Board of Review		$191,839.20	
Remission of Penalty		9,591.90	
Payments		53,402.75	254,833.85
			$ 54,826.68"

Service of the bankruptcy notice on the debtor was effected on the 22nd August, 1967. On the 28th August, 1967, i.e. within 7 days of the service of the bankruptcy notice, the debtor, by his solicitor, gave notice to the creditor that he disputed the validity of the said notice on 2 grounds, namely, (1) that the judgment had been varied by consent and, in the exact words of the debtor, "could no longer stand and ought to be set aside *ex debito* justitiae", and (2) that the sum owed by him was $50,240.45 so that the notice was for a bigger sum than the one actually due. The first objection appears in the affidavit of the debtor, and the second in the notice of motion seeking to set aside the bankruptcy notice.

I confess myself unable to understand the meaning or the logic of the first ground. If, in fact, a judgment obtained by consent had been varied but not agreed not to be acted upon, then the sum agreed to be still outstanding must, by any manner of thinking, be available to found a writ for seizure and execution or a bankruptcy notice unless, of course, such variation had the effect of an acknowledgment that no debt was due. No such allegation was, in fact, made and, in point of fact, in the same breath, the debtor went on to admit that he owed $50,240.45 but not $54,826.68. This ground was, however, not pursued at the hearing and I took it as abandoned. In any event, it is, in my view completely devoid of any merit.

The notice to dispute the validity of the bankruptcy notice was given in pursuance of the proviso to section 3(2), Bankruptcy Ordinance No. 20 of 1959 (now repealed and re-enacted in section 3(2), Bankruptcy Act No. 55 of 1967), to make the question of an excess a vital issue in the matter.

In his affidavit, the debtor exhibited a letter from H. L. Edwards, Assistant Comptroller of Income Tax, Penang, dated 16th August, 1965, addressed to the debtor's accountants. It was, in its relevant portion, in the following words:—

"The following is the tax over and above that already paid on the assessments for 1957 to 1961:—

1958	$101,966.00	
1960	1,109.65	
1961	Nil	$103,075.65
Less overpaid —		
1957	$5,142.70	
1959	7,692.50	12,835.20
		$ 90,240.45
Paid recently		30,000.00
		$ 60,240.45"

Subsequent to this letter, the debtor paid 2 sums of $5,000 each. Relying solely on this letter, he submitted that his indebtedness was $50,240.50, and in his affidavit he categorically affirmed that the sum of $54,826.68 claimed was not due and owing on the judgment or otherwise and far exceeded the sum validly due and owing by him.

In reply, an assessment officer of the Inland Revenue Department gave figures showing how the sum of $54,826.68 was arrived at but made no reference whatsoever to the letter from H. L. Edwards or to the figures therein, thus giving rise to a complaint by the debtor and, what is

more pertinent to the court, affording no assistance to me.

However, the truth of the matter becomes apparent from a consideration of the figures given by the assessment officer. According to him, in Civil Suit No. 113 of 1963, the claim against the debtor was for:—

(i) Tax for 1958, additional, 1960, additional, and 1961, additional	$294,914.85
(ii) Penalty — added pursuant to section 54(1), Income Tax Ordinance, 1947	14,745.68
	$309,660.53

which total was given as the principal in the bankruptcy notice.

Subsequent to the judgment and as a result of deliberations before the Board of Review, the amount of tax payable by the debtor was reduced by $191,839.20, leaving a tax payable in the sum of $103,075.65, as a simple exercise in subtraction will immediately reveal:—

Tax claimed	$294,914.85
Tax reduced	191,839.20
Tax payable	$103,075.65

This is the exact figure given by H. L. Edwards, and being only the tax *does not include the penalty* which it is within the competence and duty of the creditor to levy under section 84(1) of the Income Tax Ordinance, 1947, and the liability of the debtor to pay.

I pause here to remark that the inference of fact sought to be drawn by the debtor from the contents of a single letter quoted out of their context in the history of his tax involvements, is a classic example of the error he would induce the court to fall into by the process known as *suggestio falsi*. It is, on the facts, plainly wrong. For myself, I would have thought that the obvious and definitely the cheaper course for the debtor to take, if he were in any doubt, would be to approach the department of inland revenue for a reconciliation of the sum claimed by the creditor. I am not at all convinced that the debtor was in any doubt whatsoever. The writ that was served on him in Civil Suit No. 113 of 1963 was, in fact, endorsed for a claim in respect of the penalty imposed.

As for the penalty, a sum of $9,591.90 from the penalty of $14,745.68 initially imposed was remitted for that part of the tax payable which had been reduced, leaving a balance of $5,153.78. This penalty must clearly be taken into account. It is nowhere submitted to me that it should not be imposed.

Further, the debtor was in error and to his disadvantage in not claiming a further sum of $567.55 paid by or allowed to him. He has claimed payments of $12,835.20, $30,000.00, $5,000.00 and $5,000.00 in the total sum of $52,835.20. The creditor has allowed a total payment of $53,402.75 inclusive of the 2 sums of $5,000.00 each. This is $567.55 in excess of what the debtor claims to his credit.

If one, therefore, takes the figure of $50,240.45 accepted by the debtor, adds thereto the penalty of $5,153.78 and deducts from the total the sum of $567.55 allowed by the creditor, the net sum is $54,826.68 as claimed by the creditor.

There is, therefore, no admission in H. L. Edwards' letter that the sum due and payable was less than the $54,826.68 claimed.

I find, consequently, that the creditor has not claimed any sum in excess of what is clearly due by the debtor and, on this ground, hold that the bankruptcy notice is not invalidated by any excess claimed.

A further attack was launched against the bankruptcy notice, objections being taken to the form of the notice on the grounds (1) that it offends against section 7(1) of the Courts of Judicature Act No. 7 of 1964, and (2) that the endorsement thereto had not been signed by the creditor or on his behalf, and (3) that the request for the notice was not signed personally by the Comptroller or Income Tax but by his assistant.

Section 7(1) of the Courts of Judicature Act, 1964, reads:—

> "All summonses, warrants, orders, rules, notices and mandatory processes whatsoever, whether civil or criminal, shall be issued and shall be expressed to be issued by the Chief Justice of the High Court issuing the same in the name of the Yang di-Pertuan Agong and shall be signed by a registrar of such court; and every such summons, warrant, order, rule, notice and mandatory process shall be sealed with the seal of the court issuing or making the same."

and it was urged upon me that the bankruptcy notice, not being issued or expressed to be issued by the Chief Justice in the name of the Yang di-Pertuan Agong, was void and of no effect and a nullity. Now, this sub-section is a merger of section 5(1)(2) of the Courts Ordinance, 1948, which it replaced and Order 2 rule 8 of the Rules of the Supreme Court, 1957. Once this is realised, and by the *ejusdem generis* rule of interpretation, the meaning becomes clear. In my view, the word "notices" therein mentioned refers to such mandatory processes as, for example, notices of writ to be served out of jurisdiction, in other words, to processes where the addressee is, by the Chief Justice in the name of the Yang di-Pertuan Agong, commanded to do something upon penalty of having a judgment entered or an order made against him and does

not refer to notices purely as such where advice is given to the addressee of a state of affairs. Notices of the latter sort are, in my view, covered by section 7(2) of the Courts of Judicature Act, 1964, which reads:—

"7. (2) All summonses, warrants, orders, rules, notices and other processes whatsoever, whether civil or criminal, issued or made by or by the authority of any court respecting any cause or matter within its jurisdiction shall have full force and effect and may be served or executed anywhere within Malaysia."

To my mind, a bankruptcy notice is of such a nature and I accordingly hold the bankruptcy notice from the Bankruptcy Rules, 1897, which, by the operation of section 28 of the Interpretation Act No. 23 of 1967, is prescribed for this purpose, does not offend against section 7(1) of the Courts of Judicature Act, 1964, and is a perfectly good notice.

As for the debtor's other objection, the form provided in the Bankruptcy Rules, 1897, contains no requirement for the signature of the creditor or any person on his behalf. Reliance by the debtor on the English form (See *Atkin's* Court Forms and Precedents (1st Edition) Vol. 4 page 83) as the *sine qua non* of bankruptcy proceedings in Penang is both unrealistic and unfounded.

Lastly, the definition of "Comptroller" in section 2 of the Income Tax Ordinance, 1947, includes a deputy comptroller or an assistant comptroller. There can be no valid objection to the request for a bankruptcy notice being signed by an assistant comptroller.

For the reasons above, I was of the view that the debtor's objections were unfounded in fact and in law, and I accordingly dismissed his application with costs.

Application dismissed.

Solicitors: *Jag-Jit Singh & Co.*